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15 *Attorneys for Defendant and*
16 *Counterclaim Plaintiff IGT*

17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF NEVADA**

19 ACRES 4.0,

20 Plaintiff and
21 Counterclaim
22 Defendant,

23 v.

24 IGT,

25 Defendant and
26 Counterclaim
27 Plaintiff,

28 v.

Acres Manufacturing Company, John F. Acres,

Counterclaim
Defendants.

Case No.: 2:21-cv-01962-GMN-BNW

**IGT'S UNOPPOSED MOTION TO
SEAL EXHIBIT 6 TO ITS MOTION
TO COMPEL (ECF NO. 59) AND
EXHIBIT 6 TO ITS MOTION TO
EXTEND (ECF NO. 60).**

1 Defendant/Counterclaim Plaintiff IGT, by and through its attorneys of record,
2 hereby files this Motion to Seal.

3 On May 10, 2022, IGT filed a Motion to Compel and a Motion to Extend. (ECF
4 Nos. 59 and 60). On May 12, 2022, Plaintiff/Counterclaim Defendants notified IGT that
5 Counterclaim Defendants considered as confidential certain portions of an email between
6 counsel, filed as Exhibit “6” of IGT’s Motion to Compel (ECF No. 59) and Motion to
7 Extend (ECF No. 60). Although the email was not previously designated as confidential,
8 based on Acres’ representations, IGT brings this motion to the Court.
9 Plaintiff/Counterclaim Defendants have advised IGT that they do not oppose this Motion
10 and that IGT may submit this Motion noting it is unopposed. This Motion is based on the
11 following Memorandum of Points and Authorities, all pleadings and papers on file with
12 this Court, and all argument and testimony that the Court may consider at the time of
13 hearing.

14 Dated: May 13, 2022

15 /s/ Jennifer M. Kurcz

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MEMORANDUM OF POINTS AND AUTHORITIES

Under *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006), there is a strong presumption of access to judicial records. *See also Wells Fargo Bank, N.A. v. Saticoy Bay LLC Series 3948 Applecrest*, No. 2:17-cv-01360-APG-VCF, 2020 WL 2311560, at *2 (D. Nev. Apr. 23, 2020). The party seeking the sealing of court records bears the burden of overcoming that presumption. *Id.*

While a “compelling reasons” standard applies to the sealing of dispositive filings (*id.*), the Ninth Circuit has “carved out an exception” for sealed materials in connection with a motion unrelated to the merits of a case. *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (emphasis in original).¹ Under this exception, a party only needs to satisfy the “less exacting ‘good cause’ standard....” *Kamakana*, 447 F. 37 at 1180; *accord Branch Banking & Trust Co. v. Pahrump 194, LLC*, No. 2:12-cv-1462-JCM-VCF, 2015 WL 1877422, at *1-2 (D. Nev. Apr. 23, 2015) (applying “good cause” standard); *Frias Holding Co. v. Greenberg Traurig, LLP*, No. 2:11-cv-160-GMN-VCF, 2015 WL 4622591, at *3 (D. Nev. Aug. 3, 2015) (same). Good cause for sealing is demonstrated by “showing that specific prejudice or harm will result if the materials are not filed under seal.” *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF, 2011 WL 1630338, at *1 (D. Nev. Apr. 29, 2011) (citation omitted). Finally, a request to seal records must be “narrowly tailored” to remove from public access only that material warranting protection. *Saticoy*, 2020 WL 2311560, at *2.

In support of this motion, IGT states as follows:

First, on May 10, 2022, IGT filed a Motion to Compel and a Motion to Extend. (ECF Nos. 59 and 60). On May 12, 2022, Plaintiff/Counterclaim Defendants notified IGT that Counterclaim Defendants considered as confidential certain portions of an email

¹ IGT submits that, even if the Court applies a “compelling reasons” standard (to the extent the Motion is deemed somewhat dispositive or determinative of this case), this Motion to Seal should still be granted because there is a compelling justification for sealing of confidential source code information (for the same reasons discussed herein), especially where a redacted version of the subject document has been placed on file with the Court. (*See Exhibits A and B*).

1 between counsel, filed as Exhibit “6” of IGT’s Motion to Compel (ECF No. 59) and Motion
2 to Extend (ECF No. 60). Although the email was not previously designated as confidential,
3 Plaintiff/Counterclaim Defendants represented to IGT that it considered certain portions
4 of that email as confidential (the number of lines of source code gathered, and the name of
5 the programming language) confidential in IGT’s Motion to Compel (ECF No. 59-6) and
6 Motion to Extend (ECF No. 60-6). *Aevoe Corp. v. AE Tech. Co.*, No. 2:12-cv-00053-
7 GMN-NJK, 2013 WL 2302310, at *2 (D. Nev. May 24, 2013) (finding good cause to seal
8 financial information, product specifications, and pricing information that the party treats
9 as sensitive business information).

10 Second, IGT does not rely on the redacted portions of Exhibit “6” for either its
11 Motion to Compel or IGT’s Motion to Extend. Thus, based on Acres’ representations,
12 protecting the redacted non-public information outweighs any public interest in access to
13 this litigation’s records or understanding the judicial process in relation to this case. The
14 proposed sealing is minimal and would not significantly hinder any public person’s ability
15 to understand the judicial process in relation to this dispute – e.g., this Motion only seeks
16 to seal very limited portions of Exhibit “6” to IGT’s Motion to Compel and IGT’s Motion
17 to Extend regarding the programming language and number of lines of source code
18 currently gathered by Acres. Thus, the filing would not significantly affect any person’s
19 ability to understand the judicial process in relation to this case. The parties have agreed
20 upon redacted version of the Exhibits, which are attached here as Exhibits “A” and “B.”

21 Based on the foregoing, the applicable standard for sealing has been satisfied. It is
22 respectfully requested that the Court enter an Order sealing the following document/docket
23 entries:

- 24 • Exhibit “6” to Plaintiff’s Motion to Compel (ECF No. 59-6); and
 - 25 • Exhibit “6” to Plaintiff’s Motion to Extend (ECF No. 60-6).
- 26
27
28

Furthermore, IGT respectfully requests that upon granting of this motion, the Clerk replace the publicly viewable versions of ECF No. 59-6 and ECF No. 60-6 with the redacted versions attached here are Exhibit "A" and Exhibit "B," respectively.

Plaintiff/Counterclaim Defendants have advised IGT that they do not oppose this Motion and that IGT may submit this Motion noting it is unopposed.

Dated: May 13, 2022

/s/ Jennifer M. Kurcz

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*Attorneys for Defendant and
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INDEX OF EXHIBITS—LR IA 10-3(d)

Exhibit No.	Title
A	Replacement Exhibit for ECF 59-6 - Email Chain Re “Acres 4.0 v. IGT: Acres” Source Code,” dated April 12, 2022 – May 6, 2022
B	Replacement Exhibit for ECF 60-6 - Email Chain Re “Acres 4.0 v. IGT: Acres” Source Code,” dated April 12, 2022 – May 6, 2022

ORDER

IT IS ORDERED that ECF No. 63 is GRANTED for good cause shown.

IT IS FURTHER ORDERED that the Clerk of Court is kindly directed to keep Exhibit 6 to ECF Nos. 59 and 60 under seal.

IT IS FURTHER ORDERED that the Clerk of Court shall detach and separately file the exhibits to ECF No. 63 and label them on the docket as "Redacted Versions of Exhibit 6 to ECF Nos. 59 and 60" for clarity of the record.

IT IS SO ORDERED

DATED: 3:41 pm, May 16, 2022



**BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE**

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jennifer M. Kurcz

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